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ABSTRACT

This booklet is a guide to the provisions of the Fair Labor Standards Act (also known as the Wage-Hour Law) which apply to minors employed in agriculture. The content is as follows: coverage of the child labor provisions regarding agricultural employment, minimum age standards for employment in agriculture, school hours and employment in agriculture, hazardous occupations in agriculture, exemptions from hazardous occupations order in agriculture (student-learners, 4-H federal extension service training program, and vocational agriculture training program), penalties for violations, certificates of age, recordkeeping for employment of minors, and minimum wage for agricultural employment. Information as to where inquiries about the Fair Labor Standards Act can be forwarded is provided. (EM)

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CHILD LABOR

REQUIREMENTS IN AGRICULTURE

UNDER THE

FAIR LABOR STANDARDS ACT

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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WAGE AND HOUR DIVISION
CHILD LABOR BULLETIN NO. 102

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CHILD LABOR BULLETIN NO. 102

(Child Labor Bulletin No. 101 deals with the employment of minors in non-agricultural occupations.)

This booklet is a guide to the provisions of the Fair Labor Standards Act (also known as the Wage-Hour Law) which apply to minors employed in agriculture. In addition to child labor provisions, the Act also contains provisions on minimum wage, overtime, equal pay, and record keeping.

It is important to note that the child labor provisions of the Act apply to the agricultural employment of all children, migrant as well as local resident children.

OTHER CHILD LABOR LAWS

Other Federal and State laws may have higher standards. When these apply, the more stringent standard must be observed. All states have child labor laws and all but one have compulsory school attendance laws.

"This publication is based on the provisions of the Fair Labor Standards Act before the adoption of the recently passed amendments which take effect ~~May~~ Nov. 1, 1974. Revision of the publication will be made where necessary to conform to the new amendments. If you have any specific questions you are urged to contact the nearest Wage-Hour Office."

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COVERAGE OF THE CHILD LABOR PROVISIONS

The Fair Labor Standards Act of 1938 (FLSA) establishes minimum ages for covered employment in agriculture unless a specific exemption applies. Covered employment in agriculture includes employees whose occupations involve growing crops or raising livestock which will leave the State directly or indirectly through a buyer who will either ship them across State lines or process them as ingredients of other goods which will leave the State.

Employees covered include workers who:

- -- raise livestock, bees, fur-bearing animals, or poultry;
- -- cultivate the soil, grow, or harvest crops;
- -- grow or harvest crops as employees of a contractor;
- -- as employees of either the farmer or an independent contractor, do work on the farm which is incidental to the farming operations of that farm (such as threshing grain grown on that farm);
- -- as employees of the farmer, do work off the farm which is incidental to the farming operations of the farm.

The child labor provisions may apply to employment in any of the above regardless of farm size or the number of man-days of farm labor used on that farm.

MINIMUM AGE STANDARDS FOR EMPLOYMENT IN AGRICULTURE

16 - Minimum age for employment
  -- in any agricultural occupation declared hazardous by the Secretary of Labor;
  -- during school hours;

14 - Minimum age for employment outside school hours
  -- in any agricultural occupation <u>not</u> declared hazardous by the Secretary of Labor;

  <u>except</u>:

  * 12 and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent or person standing in place of the parent is also employed;

* minors under 12 may be employed with written parental consent on farms whose employees are exempt from the Federal minimum wage provisions.

Note: Minors of any age may be employed by their parent or person standing in place of their parent at any time in any occupation on a farm owned or operated by their parent or person standing in place of their parent.

SCHOOL HOURS AND EMPLOYMENT IN AGRICULTURE

Minors under 16 years of age may not be employed during school hours unless employed by their parent or person standing in place of their parent. School hours are those set for the school district in which a minor is living while employed in agriculture.

For example:

* If the school is in session from 9 a.m. to 3 p.m. in the school district where the minor is living while working, the minor may work only before 9 a.m. or after 3 p.m. on school days.
* Work before or after school hours, during weekends, or on other non-school days is considered work outside school hours.
* School hours provisions apply to private as well as public schools.
* A crew leader who takes workers to an area where schools are open may not allow minors under 16 to work during the hours school is in session in the school district where the farm work is being done.
* Work during school hours refers to the hours maintained for the school district. No provision is made for the release of individual children or any class or grade to work in agriculture.

HAZARDOUS OCCUPATIONS IN AGRICULTURE

The Secretary of Labor has found and declared that the following occupations in agriculture are hazardous. No minor under 16 may be employed at any time in these occupations except as exempt (see page 7).

(1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(2) Operating or assisting to operate (including starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mecnanism of a nongravity-type self-unloading wagon or trailer; or

(iii) Power post-hole digger, power post driver, or nonwalking-type rotary tiller.

(3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Trencher or earthmoving equipment;

(ii) Fork lift;

(iii) Potato combine; or

(iv) Power-driven circular, band, or chain saw.

(4) Working on a farm in a yard, pen, or stall occupied by a:

(i) Bull, boar, or stud horse maintained for breeding purposes; or

(ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present).

(5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.

(6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.

(7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

(8) Working inside:

(i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

(ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(iii) A manure pit; or

(iv) A horizontal silo while operating a tractor for packing purposes.

(9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label;

(10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or

(11) Transporting, transferring, or applying anhydrous ammonia.

EXEMPTIONS FROM HAZARDOUS OCCUPATIONS ORDER IN AGRICULTURE

These prohibitions do not apply to the employment of minors under 16 years of age by their parents or by persons standing in the place of their parents on farms owned or operated by such parents or persons.

Under carefully regulated conditions, employment of 14 and 15-year-old minors in certain of the agricultural occupations found and declared to be hazardous is exempt. They are:

STUDENT-LEARNERS

Student-learners in a bona fide vocational agriculture program may work in the occupations listed in items 1 through 6 of the hazardous occupations order under a written agreement which provides that the student-learner's work is incidental to training, intermittent, for short periods of time, and under close supervision of a qualified person; that safety instructions are given by the school and correlated with on-the-job training; and that a schedule of organized and progressive work processes has been prepared. The written agreement must contain the name of the student-learner, and be signed by the employer and a school authority, each of whom must keep copies of the agreement.

4-H FEDERAL EXTENSION SERVICE TRAINING PROGRAM

Minors 14 and 15 years old who hold certificates of completion of either the tractor operation or machine operation program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificates of completion on file with the minor's records.

Enrollment in this program is open to minors who are not members of 4-H as well as 4-H members. Information on this program is available from an Extension Agent of the Cooperative Service of a land grant university.

VOCATIONAL AGRICULTURE TRAINING PROGRAM

Minors 14 and 15 years old who hold certificates of completion of either the tractor operation or machine operation program of the U.S. Office of Education Vocational Agriculture Training Program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificate of completion on file with the minor's records.

Information on the Vocational Agriculture Training Program is available from vocational agriculture teachers.

PENALTIES FOR VIOLATIONS

For each violation of the child labor provisions or any regulation issued thereunder, employers may be subject to a civil money penalty of up to $1,000.

The Act was amended, effective May 1, 1974, authorizing (in section 16(e)) the Secretary of Labor to assess a civil money penalty of not to exceed $1,000 for each violation of the child labor provisions of the Act or any regulation issued thereunder. When a child labor-civil money penalty is assessed against an employer, the employer has the right, within 15 days after receipt of the notice of such penalty, to file an exception to the determination that the violation or violations of the child labor provisions occurred. When such an exception is filed with the Administrator of the Wage and Hour Division, the matter is referred to the Chief Administrative Law Judge, and a formal hearing is scheduled. At such hearing the employer may, or

an attorney retained by the employer may, present such witnesses, introduce such evidence and establish such facts as the employer believes will support the exception. The determination of the amount of any civil money penalty becomes final if no exception is taken to the administrative assessment thereof, or if an exception is filed, pursuant to the decision and order of the administrative law judge.

The Act also provides, in the case of willful violation, for a fine up to $10,000; or, for a second offense committed after the conviction of such person for a similar offense, for a fine of not more than $10,000; or imprisonment for not more than 6 months, or both. The Secretary of Labor may also ask a Federal district court to restrain future violations of the child labor provisions of the Act by injunction.

CERTIFICATES OF AGE

Employers may protect themselves from unintentional violation of the child labor provisions by keeping on file an employment or age certificate for each minor employed to show that the minor is the minimum age for the job. Certificates issued under most State laws are acceptable for the purposes of the Act.

RECORD KEEPING FOR EMPLOYMENT OF MINORS

Every employer (except a parent or person standing in the place of a parent employing one's own child on a farm owned or operated by such parent or person) who employs any minor under 16 years of age in agriculture must maintain and preserve records containing the following data about each minor employed:

1. Name in full.

2. Place where the minor lives while employed. If the minor's permanent address is elsewhere, both addresses should be given.

3. Date of birth.

4. Evidence in writing of any consent of the parent or person standing in place of the parent of the minor, if consent is required. (See page for information on the ages to which this rule applies.)

MINIMUM WAGE FOR AGRICULTURAL EMPLOYMENT

The Fair Labor Standards Act extends minimum wage provisions to farm employees, including minors, whose employer used more than 500 man-days of farm labor during any calendar quarter of the previous calendar year. Unless otherwise exempt, employees covered by the minimum wage provisions must be paid at least the following:

$2.20 an hour effective January 1, 1977

$2.30 an hour effective January 1, 1978

Farm workers are not subject to the overtime provisions of the Act.

No minimum wage and overtime pay is required for the following:

1. Members of the employer's immediate family.

2. Hand harvest laborers paid piece rates in an operation generally recognized as piece work in the region, under <u>both</u> of the following conditions: (1) they go each day to the farm from their <u>permanent</u> residence; and (2) they have been employed in agriculture less than 13 weeks in the previous calendar year.

3. Migrant hand harvest laborers 16 years of age or under who are employed on the same farm as their parents and under <u>both</u> of the following conditions: (1) they are paid piece rates in an operation generally recognized as piecework in the region; and (2) the piece rate is the same as paid workers over the age of 16.

4. Employees principally engaged in the range production of livestock.

ADDITIONAL INFORMATION

Inquiries about the Fair Labor Standards Act will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing. These offices also supply publications free of charge.

GPO 912-063